

**BEFORE THE
MISSOURI BOARD OF PHARMACY
STATE OF MISSOURI**

IN RE:)
)
ZACHARY PAUL MCMAHON) **Case #2009-000970**

**ORDER OF THE MISSOURI BOARD OF PHARMACY
ISSUING ZACHARY PAUL MCMAHON A PHARMACIST LICENSE
SUBJECT TO PROBATION**

Comes now the Missouri Board of Pharmacy ("Board") and issues its ORDER granting a PROBATED pharmacist license, license number 2009020204, to Zachary Paul McMahon, ("McMahon") pursuant to the provisions of Section 324.038, RSMo. As set forth in Section 324.038, RSMo, McMahon may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated license to McMahon. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of issuance of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Room 640, Jefferson City, MO 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be waived.

The disciplinary period shall become effective immediately upon issuance of McMahon's license as a pharmacist. Should McMahon file a written request for review of this Order, the terms and conditions of the Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an order contrary to this Order.

FINDINGS OF FACT

1. The Missouri Board of Pharmacy (hereinafter "Board") is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues pharmacist license number 2009020204 to McMahon in lieu of denial of McMahon's request for a license to practice pharmacy in Missouri. License number 2009020204 is issued subject to the terms and conditions set forth herein below.

3. Zachary Paul McMahon filed an application for licensure as a pharmacist by reciprocity with the Board on February 4, 2009. McMahon is licensed as a pharmacist in the state of Kansas.

4. On that application McMahon stated that his pharmacist license had been disciplined by other states and had violated the drug laws or rules and regulations of Missouri, another state, or the United States.

5. Also on that application McMahon stated that in the last ten years he used drugs, controlled substances, or alcoholic beverages to the extent that such use impaired his ability to perform the work of a pharmacist. He also stated on that application that he had been or now is addicted to drugs, controlled substances, or alcohol.

6. In 2004, the state of Iowa issued an Emergency Order restricting McMahon's pharmacist license because McMahon had stolen clonazepam and morphine sulfate from his employer and used these drugs without having a prescription for them. McMahon claims that he used these drugs in an attempt to commit suicide. When he renewed his license in Iowa he falsely stated he had never been convicted or pled guilty to drug or alcohol offense, even though he had pled guilty in 1997 to public intoxication, and again in 2000.

7. In February 2005 the state of Iowa placed McMahon's pharmacist license on probation for three years, subject to numerous conditions.

8. In September 2006, the state of Iowa filed charges against McMahon's pharmacist license for unlawful possession of a controlled substance, misrepresentation, fraud, forgery, deception, or subterfuge, and failure to comply with terms of his 2005 discipline. These charges were filed because McMahon purchased phentermine through an illegal internet source without a valid prescription between March 1, 2006, and June 16, 2006.

9. In the fall of 2006 McMahon attended an outpatient treatment program for substance abuse and asserts he has been clean and sober since completion of the program. He also claims he remains active in Alcoholic Anonymous and attends a Caduceus support group of recovering professionals on a weekly basis.

10. On November 19, 2008, Iowa released McMahon from probation and his Iowa pharmacist license is now current and in good standing.

11. The state of Iowa informed the National Association of Boards of Pharmacy (NABP) that McMahon's license as a pharmacist is active and in good standing in that state.

12. On December 22, 2008, McMahon filed an application for transfer of his Iowa pharmacist license with the National Association of Boards of Pharmacy. The Board received the application from NABP on January 15, 2009. On February 4, 2009, the Board received a licensure transfer applicant statement from McMahon.

13. On June 26, 2009, McMahon took the examination necessary to be licensed as a pharmacist and received a passing score on that examination.

14. Based on information received by the Board, pursuant to Section 338.055 RSMo, the Board concluded McMahon engaged in conduct which would be grounds for disciplinary action by the Board if McMahon were licensed by the Board, and grounds for denial of McMahon's application for licensure by reciprocity filed with the Board.

15. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues pharmacist license number 2009020204 to McMahon in lieu of denial of McMahon's request for a license to practice pharmacy in Missouri. License Number 2009020204 is issued subject to the terms and conditions set forth herein below.

CONCLUSIONS OF LAW

16. McMahon's conduct as alleged above is cause for the Board to deny McMahon a license to practice pharmacy pursuant to Section 338.055.1 and .2, RSMo, which states in pertinent parts:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

17. Section 324.038, RSMo, provides in pertinent part:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

18. The Board hereby issues this ORDER in lieu of denial of McMahon's request for a license to practice pharmacy in Missouri pursuant to Section 324.038, RSMo.

ORDER

Based on the foregoing and in lieu of denying McMahon a pharmacist license, the Board issues Zachary P. McMahon a license subject to PROBATION for five (5) years (hereinafter "disciplinary period"). The terms of discipline shall be:

1. McMahon shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time McMahon is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the Board a list of locations worked if requested by the Board or Board's representative.

2. McMahon shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

3. McMahon shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. McMahon shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. McMahon will be notified and given sufficient time to arrange these meetings.

5. If, after disciplinary sanctions have been imposed, the McMahon ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

6. McMahon shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this disciplinary order within five (5)

business days of the date of discipline or the beginning date of each employment. If at any time McMahon is employed by a temporary employment agency he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this disciplinary order prior to or at the time of any scheduled work assignments.

7. McMahon shall not serve as a preceptor for interns.

8. If applicable, McMahon shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state and federal registrations for the purpose of storing, distributing or dispensing controlled substances.

9. McMahon shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after the date of this Order, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

10. McMahon shall participate in the Board's random drug testing/urinalysis program administered by FirstLab, the Board's approved drug testing/urinalysis vendor. McMahon shall enroll in FirstLab's Professional Health Monitoring Program as directed by the Board or the Board's designated representative. McMahon shall comply with all requirements imposed by FirstLab for the drug testing/urinalysis program, including, but not limited to, any drug test/urinalysis requirements, any testing/urinalysis scheduling requirements, any McMahon reporting or telephone contact requirements designated by FirstLab and any requirements for purchasing/maintaining chain of custody (COC) forms or other required program documents/materials.

11. McMahon shall undergo periodic drug testing/urinalysis as requested by the Board or FirstLab, at McMahon's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

12. If the Board's approved drug testing/urinalysis vendor changes, McMahon shall participate in and comply with any drug testing/urinalysis requirements requested by the Board.

13. McMahon shall complete an alcohol/drug abuse counseling and treatment program approved by the Board. Said program shall meet the requirements set forth in 20 CSR 2220-2.170 (6).

a. Documentation required for counselor/program approval must be submitted to the Board office and McMahon's counselor/program must receive Board approval within three (3) months after the date of this Order. Any unexpected or requested change in treatment

counselor/program shall be submitted to the Board within ten (10) days of the change; and the program approval process must again be completed.

b. McMahon shall, within six (6) weeks of the date of this Order, undergo an evaluation for chemical dependency performed by a licensed or certified chemical dependency professional. McMahon shall cause the results of the evaluation to be mailed directly to the Missouri Board of Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102 within ten (10) days after the evaluation has been completed. Each evaluation report shall include the licensee's present state of impairment; a description of the tests performed and the results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; appropriate treatment recommendations/plan; the beginning date of treatment; and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. McMahon shall follow any treatment recommendations made by that chemical dependency professional.

c. McMahon shall provide a copy of this Order to all chemical dependency professionals involved in McMahon's treatment, and all medical professionals issuing/renewing a controlled substance, carisoprodol, nalbuphine, or tramadol prescription to McMahon. Said disclosure shall be made before the evaluation required in Paragraph B, before the issuance of any new prescriptions and, in the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the date of this Order. McMahon shall simultaneously report to the Board office that said disclosure has taken place.

d. McMahon shall execute a medical release effective for the entire disciplinary period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding McMahon's treatment. McMahon shall not take any action to cancel this release. McMahon shall take all steps necessary to continue the release in effect and shall provide a new release when requested.

e. McMahon shall cause a report of ongoing treatment evaluation to be submitted from the Board-approved chemical dependency professional to the Board office on the schedule prescribed by 20 CSR 2220-2.170(6)(E). The report shall be completed by the treating professional within four weeks prior to the date it is due. The report shall include an evaluation of McMahon's current progress and status related to the treatment recommendations/plan, and McMahon's current prognosis as well as revised treatment recommendations/plan.

f. McMahon shall submit evidence of weekly (or counselor recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board once every six (6) months throughout the disciplinary period. The documentation

shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

g. If the treatment of McMahon is successfully completed at any time during the disciplinary period, McMahon shall cause the Board-approved chemical dependency professional to submit a report of final evaluation/summary.

h. McMahon shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

i. McMahon shall provide the Board office, within 10 days of the date of this Order, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in McMahon's possession on the beginning date of discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription.

j. McMahon shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom McMahon has a bona fide relationship as a patient. Upon request, McMahon shall execute a medical release authorizing the medical professional that prescribed the controlled substance or other drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding McMahon's treatment. The presence of any controlled substance whatsoever in a biological fluid sample for which McMahon does not hold a valid prescription shall constitute a violation of discipline. McMahon shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of McMahon's receipt of the prescription.

k. McMahon shall inform any professional preparing a prescription for McMahon that McMahon is chemically dependent.

14. When the Well-being Committee created by Section 338.380, RSMo, is established, fully functional, and fully operational, McMahon is required to become a participant in the Committee's program for the remainder of the disciplinary period. The Board will notify McMahon when this occurs and McMahon will bear all the costs of the program.

15. McMahon shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

16. McMahon's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

17. The parties to this Order understand that the Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

16. Upon the expiration of the disciplinary period, McMahon's license as a pharmacist shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the board determines that McMahon has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline McMahon's pharmacist license.

17. No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for a hearing before the Board in accordance with provisions of Chapter 536, RSMo.

18. If the Board determines that McMahon has violated a term or condition of this Order, which violation would be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED this 22nd day of July, 2009

MISSOURI BOARD OF PHARMACY


KIMBERLY A. GRINSTON
EXECUTIVE DIRECTOR